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GUIDANCE SOFTWARE, INC.  
and MICHAEL GURZI

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii  
citizen,

Plaintiff,

v.

(CAPTION CONTINUED)

) Civil No. CV03 00385 SOM/LEK  
) (Copyright)  
)  
) DEFENDANTS GUIDANCE  
) SOFTWARE, INC. AND MICHAEL  
) GURZI'S OPPOSITION TO  
) PLAINTIFF WAYNE BERRY'S  
) MOTION FOR RECUSAL FILED

HAWAIIAN EXPRESS SERVICE, )	MAY 10, 2006; CERTIFICATE OF
INC., a California corporation, et )	SERVICE
al., )	
)	
Defendants. )	No Hearing Set
_____ )	

**DEFENDANTS GUIDANCE SOFTWARE, INC. AND  
MICHAEL GURZI'S OPPOSITION TO PLAINTIFF  
WAYNE BERRY'S MOTION FOR RECUSAL FILED MAY 10, 2006**

Plaintiff Wayne Berry's ("Berry") Motion for Recusal ("Motion") should be denied. The Motion has the odor of sour grapes. After having lost his frivolous copyright infringement lawsuit against Guidance Software, Inc. and Michael Gurzi (collectively "GSI Defendants"), let alone the other prevailing defendants, Berry now faces the prospect of paying attorneys' fees and costs to the winning parties. Through this last-ditch gambit, he is attempting to cobble together "cause" for recusal of this Magistrate Judge, who, dating back to Berry's first infringement suit against Fleming, has been an eyewitness to Plaintiff's outrageous litigation shenanigans, up to and including the instant motion.

The Motion is without merit. Under 28 U.S.C. § 455(a), "the standard [for recusal or disqualification] remains one of

reasonableness and should not be interpreted to include spurious charges of impartiality.” Flushing Sav. Bank v. Parr (In re Parr), 13 B.R. 1010, 1017 (E.D.N.Y. 1981) (citation omitted). Even if this Court were to have acknowledged a friendship with Lex Smith, Berry’s unsupported musings and speculations do not demonstrate reasonable grounds giving rise to an obligation under 18 U.S.C. § 3057(a). *See, e.g., In re Botany Indus., Inc.*, 463 F.Supp. 793, 799 (E.D. Pa. 1978) (holding bankruptcy judge had no duty under § 3057(a) to report allegations of fraud where court did not have reasonable grounds for believing any violations had been committed). The purported conflict in connection with this Court as alleged by Berry is a false one.

Dated: Honolulu, Hawaii, May 17, 2006.

/s/ REX Y. FUJICHAKU  
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